

Fact Sheet: Seneca Nation of Treatment as a Sovereign
Lead Division: Water Division
Applicability: Seneca Nation of Indians
Date: May 6, 2019

Issue:

The Seneca Nation of Indians (SNI) applied for Treatment as a Sovereign (TAS) to the U.S. Environmental Protection Agency Region 2 (EPA) through their March 28, 2018 Application for Determination of Eligibility for Clean Water Act (CWA) Section 106 Grant Funding and for Authorization to Implement Water Quality Standards and Certification Programs Pursuant to Sections 303 and 401 of the CWA.

History:

The CWA requires that facilities that discharge into waters of the United States have National Pollutant Discharge Elimination System (NPDES) permits. There are two small wastewater treatment facilities located in the Seneca Nation of Indians' Cattaraugus Territory (Thomas Indian School WWTP and Irving WWTP) which have been operating without NPDES permits for years. The Seneca Nation of Indians (SNI) has been opposed to obtaining NPDES permits on the basis of its sovereign status. In an effort to address this permitting issue several steps were taken by EPA including letters to the Nation, a visit to the Nation, proposing a Memorandum of Understanding (MOA) and, lastly a Letter of Agreement (LOA). As agreed to by the Nation and EPA, EPA transmitted draft permits to the SNI on August 27, 2009 so that the Nation could issue their own permits with the intent that the Nation would provide EPA with discharge information through either a MOA or LOA. Both permits were issued by the SNI, effective August 21, 2012. However, the MOA and the LOA were rejected by the Nation.

A discussion with the SNI about reviving the negotiations on a LOA and obtaining TAS occurred on February 25, 2016 during their annual program review meeting. During that meeting EPA explained the positive aspects of working with EPA. The Seneca advised EPA that they would bring the above items to the Tribal Council Members for consideration. During their recent annual program review meeting on March 25, 2019 CWRB staff met with SNI Environment Division staff. The topic of the two permits which were issued by the Nation and the lack of knowledge about the facilities and oversight was discussed. Due to the change of Tribal Leadership the current SNI Environment Division did not have copies of various documents. The SNI Environment Division expressed interest in resolving the issues with the permits and requested copies and a copy of the LOA.

On March 28, 2018 the SNI submitted an application to EPA, Region 2 the intent, of which was to determine eligibility for the CWA 106 Grant Program first while the application for authorization to implement water quality standards under Section 303(c) of the CWA and for authorization to implement certification programs under Section 401 of the CWA would be evaluated separately. WD coordinated the review with OSP and ORC.

The SNI satisfied the basic program authorization requirements under Section 518(e) of the CWA and met the requirements of 40 C.F.R. Section 131.6 (d) and is eligible to be treated in the same manner as a state for the 106 Grant Program. The Decision Document which provides detail and the specific basis for approval of the application was sent to the SNI on August 14, 2018. As such, The SNI TAS application for Section 106 Grant funding was approved by EPA, Region 2 on August 14, 2018.

Nonresponsive based on revised scope

Also, in the August 14, 2018 Decision Document for the Approval of the SNI Eligibility for 106 Grant Funding the EPA Region 2 stated that the SNI's application to implement WQS and certification programs are being evaluated separately and are currently under review. On November 6, 2018, the EPA Region 2 sent letters to the Governor of the State of New York, the New York State Department of Environmental Conservation (NYSDEC), the Governor of the State of Pennsylvania and the Pennsylvania Department of Environmental Protection that offered an opportunity to comment on the SNI assertion of authority to set forth in TAS for WQS. No comments were received. On December 6, 2018, the EPA provided notice of the SNI's application to the general public through two local newspaper postings, offering an opportunity to comment on the SNI's assertion of authority to set forth in TAS for WQS. No public comments were received.

Current Status:

The EPA Region 2 has prepared the draft decision document and is addressing the comments from the review team members. During the review on the draft decision document the EPA

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) After EPA approves SNI's authority to implement their WQS, the EPA will work with SNI to develop WQS for their waters.

It is our understanding that the SNI may also be interested in seeking authorization for the CWA Section 319 program in the future. EPA will ensure that the SNI is kept informed of all Section 319 guidance documents and will assist the Nation with the development of the annual Section 319 workplans when necessary.

**Contact: Andrea Coats, x3850, Alyssa Arcaya, x3730 and Brent Gaylord, x3868,
Argie Cirillo, 3178**